

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
South Central Communications Corp.	)	File No. EB-02-AT-232
	)	NAL/Acct. No. 200232480008
Owner of Antenna Structure Registration	)	FRN 0002-9009-26
No. 1043695 at Sevierville, Tennessee	)	
	)	
Knoxville, Tennessee	)	

**FORFEITURE ORDER**

**Adopted: January 17, 2003****Released: January 22, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to South Central Communications Corp. ("SCCC"), owner of an antenna structure with Antenna Structure Registration ("ASR") number 1043695 in Sevierville, Tennessee, for willful and repeated violations of Sections 17.47(a)(2), 17.48(a), and 17.51 of the Commission's Rules.<sup>1</sup> The noted violations involve SCCC's failure to maintain an automatic alarm system designed to detect any failure of its antenna structure lights and provide notification of such failure to the structure owner, failure to notify the Federal Aviation Administration ("FAA") immediately of an obstruction lighting outage on its antenna structure, and failure to exhibit the required obstruction lighting on its antenna structure.

2. On June 25, 2002, the Commission's Atlanta, Georgia Field Office ("Atlanta Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to SCCC for a forfeiture in the amount of ten thousand dollars (\$10,000).<sup>2</sup> SCCC filed a response to the NAL on July 19, 2002.

**II. BACKGROUND**

3. On May 15, 2002, an agent from the Atlanta Office inspected SCCC's antenna structure, ASR number 1043695, in Sevierville, Tennessee, during daytime hours and after local sunset. The agent observed that the structure was unpainted and that there was no white obstruction lighting or red obstruction lighting in operation on the structure. The ASR for the structure indicated that the structure was required to be painted in aviation orange and white and lighted with red obstruction lighting between sunset and sunrise.

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<sup>1</sup> 47 C.F.R. §§ 17.47(a)(2), 17.48(a) and 17.51.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480008 (Enf. Bur., Atlanta Office, released June 25, 2002).

4. On May 16, 2002, the agent again inspected the structure during the daytime and observed that there was no white obstruction lighting in operation on the structure. The agent also contacted the local FAA Flight Service Station and determined that there was no Notice to Airmen (“NOTAM”)<sup>3</sup> in effect for this structure.

5. On May 21, 2002, the agent contacted SCCC’s chief engineer, Bob Glenn, and advised him that the lighting on the structure was not functioning and that the structure was not painted and lighted as specified in the ASR. Mr. Glenn stated that the structure had been purchased unpainted from a former owner, and that SCCC had installed medium intensity obstruction lighting on the structure to operate 24 hours per day. Mr. Glenn also stated that the structure’s lighting is monitored by an automatic alarm system, which can detect a power failure to the lights, but cannot detect a light bulb failure. Mr. Glenn stated that SCCC was therefore unaware that the lighting on the structure had failed and had not contacted the FAA to report the lighting outage.

6. On June 25, 2002, the Atlanta Office issued an *NAL* to SCCC for a forfeiture in the amount of \$10,000 for failure to maintain an automatic alarm system designed to detect any failure of its antenna structure lighting and provide notification of such failure to the owner in willful and repeated violation of Section 17.47(a)(2) of the Rules, failure to notify the FAA immediately of an obstruction lighting outage on its antenna structure in willful and repeated violation of Section 17.48(a) of the Rules, and failure to exhibit the required obstruction lighting on its antenna structure in willful and repeated violation of Section 17.51 of the Rules.<sup>4</sup> In its response to the *NAL*, SCCC acknowledges that it was in violation of these rules on the dates specified in the *NAL* and that the circumstances warrant imposition of a forfeiture. However, SCCC requests reduction of the \$10,000 forfeiture proposed in the *NAL* based on its past history of compliance with the Commission’s rules. In this regard, SCCC states that it has been the licensee of 30 broadcast facilities over the past 50 years and has an unblemished history of compliance with the Commission’s technical requirements, including those related to towers, during this period. SCCC also notes that when it acquired the tower in 1987, the tower did not appear to be adequately painted or lighted. SCCC asserts that it immediately sought authority from the FAA to install medium intensity obstruction lighting on the tower and that the FAA subsequently notified the FCC that it had no objection to the use of such lighting on the tower. In support of this assertion, SCCC provides a copy of a 1987 letter from the FAA, which states in part: “By copy of this letter, we are informing the Federal Communications Commission that we have no objection to the use of a medium intensity white obstruction lighting system on this structure ....” Finally, SCCC notes that upon learning of the lighting

<sup>3</sup> Tower owners are required to report any obstruction lighting outages to the nearest Flight Service Station or FAA office immediately if the outage is not corrected within 30 minutes. See 47 C.F.R. § 17.48(a). The FAA then issues a NOTAM, a written advisory to aircraft pilots regarding a hazard or potential hazard of which they should be aware. A NOTAM expires automatically after 15 days, unless the tower owner calls the FAA to extend the NOTAM.

<sup>4</sup> The Atlanta Office also found that SCCC had failed to conform to the painting and lighting specifications contained in the FAA Advisory Circular specified in its ASR in willful and repeated violation of Section 17.23 of the Rules, 47 C.F.R. § 17.23. We note, however, that Section 17.23 applies only to new and altered antenna structures registered on or after January 1, 1996, not to existing structures authorized prior to July 1, 1996. See 47 C.F.R. § 17.17(a). The antenna structure at issue here was an existing structure authorized prior to July 1, 1996, and therefore is not covered under Section 17.23. This inadvertent error does not affect the forfeiture amount in this case because the *NAL* did not propose a separate forfeiture amount for violation of Section 17.23. The \$10,000 forfeiture proposed in the *NAL* is the base forfeiture amount for a tower lighting violation. See 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section I.-Base Amounts for Section 503 Forfeitures.*

outage from the FCC agent on May 21, 2002, it immediately notified the FAA of the outage and then promptly installed a new fail-safe strobe “flash head” and related failure detector which will afford automatic notification in the event of a bulb failure as well as a basic power failure.

### III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In examining SCCC’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup>

8. Section 17.47(a)(2) of the Rules requires antenna structure owners to provide and properly maintain an automatic alarm system designed to detect any lighting failure and to provide notification of such failure to the owner.<sup>8</sup> Section 17.48(a) of the Rules requires antenna structure owners to notify the FAA immediately of any obstruction light outage if the outage cannot be corrected within 30 minutes. Section 17.51 of the Rules requires antenna structure owners to exhibit the prescribed obstruction lighting. SCCC admits that it was in violation of these rules on the dates specified in the *NAL*. Accordingly, we conclude that SCCC willfully<sup>9</sup> and repeatedly<sup>10</sup> violated Sections 17.47(a)(2), 17.48(a) and 17.51 of the Rules.

9. SCCC notes that when it acquired the tower in 1987, it requested and received approval from the FAA to install medium intensity obstruction lighting on the tower. While we acknowledge that the FAA notified the Commission in 1987 that it had no objection to the use of medium intensity white obstruction lighting on SCCC’s tower in lieu of painting and red obstruction lighting, this fact does not mitigate the forfeiture proposed in the *NAL* because the medium intensity white obstruction lighting

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> As an alternative to maintaining an automatic alarm system, a tower owner may make an observation of the tower lights at least once every 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights. 47 C.F.R. § 17.47(a)(1). SCCC does not allege that it observed the tower lights visually or by observing an automatic indicator at least once every 24 hours.

<sup>9</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>10</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

installed on SCCC's tower was not functioning on the dates of inspection.<sup>11</sup> Further, the corrective actions taken by SCCC upon learning of the lighting outage from the FCC do not justify any reduction of the forfeiture. The Commission has stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.<sup>12</sup> However, after considering SCCC's history of compliance with the Commission's rules, we conclude that reduction of the forfeiture proposed in the *NAL* from \$10,000 to \$8,000 is appropriate.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>13</sup> South Central Communications Corp. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for willful and repeated violations of Sections 17.47(a)(2), 17.48(a) and 17.51 of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>14</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232480008 and FRN 0002-9009-26. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>15</sup>

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to South Central Communications Corp., 1100 Sharps Ridge Road, Knoxville, Tennessee 37917, and to its counsel, Edward S. O'Neill, Esq., Fletcher, Heald & Hildreth, P.L.C., 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209-3801.

#### FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>11</sup> As explained in note 4 *supra*, the *NAL* incorrectly cited SCCC for willful and repeated violation of Section 17.23 of the Rules for failure to conform to the painting and lighting specifications contained in the FAA Advisory Circular specified in its ASR. However, this inadvertent error does not affect the forfeiture amount because the *NAL* did not propose a separate forfeiture for violation of Section 17.23. The \$10,000 forfeiture proposed in the *NAL* is the base forfeiture amount for a tower lighting violation. See 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section I.-Base Amounts for Section 503 Forfeitures*.

<sup>12</sup> See *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>13</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>14</sup> 47 U.S.C. § 504(a).

<sup>15</sup> See 47 C.F.R. § 1.1914.